SB0182S02 compared with SB0182S01

~~{deleted text}~~ shows text that was in SB0182S01 but was deleted in SB0182S02.

inserted text shows text that was not in SB0182S01 but was inserted into SB0182S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Kirk A. Cullimore proposes the following substitute bill:

DIGITAL ASSET AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: ____________

LONG TITLE

General Description:

This bill establishes a framework for the ~~{regulation}~~ownership of digital assets.

Highlighted Provisions:

This bill:

- defines terms; and
- ~~{establishes}~~provides a ~~{fee}~~basis for understanding the ~~{provision of custodial services}~~ownership of digital assets~~{;~~
- ~~establishes jurisdiction over custodial financial institutions providing custodial services of digital assets;~~
- ~~classifies digital assets;~~
- ~~describes the requirements for:~~
  - ~~perfection of digital assets; and~~

~~• financing statements for digital assets;~~

~~► authorizes custodial financial institutions to provide custodial services of digital assets;~~

~~► describes the conditions and terms under which a custodial financial institution may provide custodial services for a digital asset;~~

~~► establishes the terms under which a person has rights in virtual currency;~~

~~► describes the conditions required for a person to exercise control of virtual currency; and~~

~~► makes technical and conforming changes}~~.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

~~{AMENDS:~~

~~**7-1-401**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1~~

~~**7-1-501**, as last amended by Laws of Utah 2016, Chapter 288~~

~~**7-3-10**, as last amended by Laws of Utah 2018, Chapter 281~~

~~**7-9-5**, as last amended by Laws of Utah 2010, Chapter 378~~

~~}~~ENACTS:

~~{7-27-101}~~13-61-101, Utah Code Annotated 1953

~~{7-27-102}~~13-61-102, Utah Code Annotated 1953

~~{ **7-27-103**, Utah Code Annotated 1953~~

~~**7-27-104**, Utah Code Annotated 1953~~

~~**7-27-201**, Utah Code Annotated 1953~~

~~**7-27-202**, Utah Code Annotated 1953~~

~~**7-27-203**, Utah Code Annotated 1953~~

~~}~~

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **~~{7-1-4}~~13-61-101** is ~~{amended to read:~~

~~**7-1-401. Fees payable to commissioner.**~~

~~(1) Except for an out-of-state depository institution with a branch in Utah, a depository institution under the jurisdiction of the department shall pay an annual fee:~~

~~(a) computed by averaging the total assets of the depository institution shown on each quarterly report of condition for the depository institution for the calendar year immediately preceding the date on which the annual fee is due under Section 7-1-402; and~~

~~(b) at the following rates:~~

~~(i) on the first $5,000,000 of these assets, the greater of:~~

~~(A) 65 cents per $1,000; or~~

~~(B) $500;~~

~~(ii) on the next $10,000,000 of these assets, 35 cents per $1,000;~~

~~(iii) on the next $35,000,000 of these assets, 15 cents per $1,000;~~

~~(iv) on the next $50,000,000 of these assets, 12 cents per $1,000;~~

~~(v) on the next $200,000,000 of these assets, 10 cents per $1,000;~~

~~(vi) on the next $300,000,000 of these assets, 6 cents per $1,000; and~~

~~(vii) on all amounts over $600,000,000 of these assets, 2 cents per $1,000.~~

~~(2) A financial institution with a trust department shall pay a fee determined in accordance with Subsection (7) for each examination of the trust department by a state examiner.~~

~~(3) Notwithstanding Subsection (1), a credit union in [its] the credit union's first year of operation shall pay a basic fee of $25 instead of the fee required under Subsection (1).~~

~~(4) A trust company that is not a depository institution or a subsidiary of a depository institution holding company shall pay:~~

~~(a) an annual fee of $500; and~~

~~(b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.~~

~~(5) Any person or institution under the jurisdiction of the department that does not pay a fee under Subsections (1) through (4) shall pay:~~

~~(a) an annual fee of $200; and~~

~~(b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.~~

~~(6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,~~

~~7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:~~

~~(a) (i) a filing fee of $500 if on the day on which the application or request is filed the person:~~

~~(A) is a person with authority to transact business as a depository institution, a trust company, or any other person described in Section 7-1-501 as being subject to the jurisdiction of the department; and~~

~~(B) has total assets in an amount less than $5,000,000; or~~

~~(ii) a filing fee of $2,500 for any person not described in Subsection (6)(a)(i); and~~

~~(b) all reasonable expenses incurred in processing the application.~~

~~(7) (a) Per diem assessments for an examination shall be calculated at the rate of $55 per hour:~~

~~(i) for each examiner; and~~

~~(ii) per hour worked.~~

~~(b) For an examination of a branch or office of a financial institution located outside of this state, in addition to the per diem assessment under this Subsection (7), the institution shall pay all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the examination.~~

~~(8) In addition to a fee under Subsection (5), a person registering under Section 7-23-201 or 7-24-201 shall pay an original registration fee of $300.~~

~~(9) In addition to a fee under Subsection (5), a person applying for licensure under Chapter 25, Money Transmitter Act, shall pay an original license fee of $300.~~

~~(10) A custodial financial institution, as that term is defined in Section 7-27-101, that provides custodial services under Chapter 27, Digital Asset Management Act, shall pay:~~

~~(a) an annual fee of $200; and~~

~~(b) an additional fee of 2 cents per $1,000,000 of digital assets for which the financial institution provides custodial services.~~

~~Section 2. Section **7-1-501** is amended to read:~~

~~**7-1-501. Institutions and persons subject to jurisdiction of department.**~~

~~(1) As provided in this title and the rules of the department, the persons and institutions described in Subsection (2) are subject to:~~

~~(a) the jurisdiction of the department; and~~

~~(b) supervision and examination by the department.~~

~~(2) Subsection (1) applies to:~~

~~(a) a depository institution chartered under the laws of this state, including any out-of-state branch of the depository institution;~~

~~(b) a Utah depository institution chartered by the federal government, but only to the extent the application of this title is authorized by:~~

~~(i) federal law; or~~

~~(ii) the appropriate federal regulatory agency;~~

~~(c) a Utah branch of an out-of-state depository institution chartered under the laws of another state;~~

~~(d) a Utah branch of an out-of-state depository institution chartered by the federal government, but only to the extent the application of this title is authorized by:~~

~~(i) federal law; or~~

~~(ii) the appropriate federal regulatory agency;~~

~~(e) a service corporation or service organization, including a credit union service organization as defined in Section 7-9-3;~~

~~(f) a trust company;~~

~~(g) an escrow company;~~

~~(h) a person or institution engaged in this state in the business of:~~

~~(i) guaranteeing or insuring deposits, savings accounts, share accounts, or other accounts in depository institutions;~~

~~(ii) operating a loan production office for:~~

~~(A) a Utah depository institution;~~

~~(B) an out-of-state depository institution; or~~

~~(C) a foreign depository institution;~~

~~(iii) a check casher or deferred deposit lender, as defined in Section 7-23-102;~~

~~(iv) a title lender, as defined in Section 7-24-102; or~~

~~(v) money transmission, as defined in Section 7-25-102;~~

~~(i) a corporation or other business entity owning or controlling an institution subject to the jurisdiction of the department;~~

~~(j) subject to Subsection (3), a technology service provider that provides services to a~~

~~depository institution subject to the jurisdiction of the department;~~

~~(k) a subsidiary or affiliate of an institution subject to the jurisdiction of the department; [and]~~

~~(l) any person or institution that, with or without authority to do so, transacts business as, or holds itself out as being, a depository institution, trust company, or any other person or institution described in this section as being subject to the jurisdiction of the department[.]; and~~

~~(m) a custodial financial institution providing custodial services, as defined in Section 7-27-101.~~

~~(3) A technology service provider is subject to regulation and examination by the commissioner to the same extent as if the service or activity of the technology service provider were being performed by the depository institution itself.~~

~~Section 3. Section **7-3-10** is amended to read:~~

~~**7-3-10. Organization -- Powers, rights, and privileges of banking corporation -- Other business activities.**~~

~~(1) A bank chartered under this chapter shall be:~~

~~(a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or~~

~~(b) subject to Section 7-1-810, including the requirement that the bank be an S Corporation immediately before becoming a limited liability company, a limited liability company created under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.~~

~~(2) A bank has all the rights, privileges, and powers necessary or incidental to carrying on the business of banking in addition to the powers granted:~~

~~(a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or~~

~~(b) subject to Section 7-1-810, if the bank is a limited liability company, under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.~~

~~(3) The commissioner may, by rule or order, determine that necessary or incidental rights, privileges, and powers include:~~

~~(a) the rights, privileges, and powers held by national banks; or~~

~~(b) other business activities so long as the commissioner's determination is not~~

~~inconsistent with the rules, regulations, or other actions of the board of governors of the Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12 U.S.C. Sec. 1843(c)(8).~~

~~(4) The commissioner shall implement this section in a manner consistent with the purposes set forth in Section 7-1-102.~~

~~(5) A bank may exercise the powers described in Chapter 27, Digital Asset Management Act.~~

~~Section 4. Section **7-9-5** is amended to read:~~

~~**7-9-5. Powers of credit unions.**~~

~~In addition to the powers specified elsewhere in this chapter and subject to any limitations specified elsewhere in this chapter, a credit union may:~~

~~(1) make contracts;~~

~~(2) sue and be sued;~~

~~(3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;~~

~~(4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;~~

~~(5) incur and pay necessary and incidental operating expenses;~~

~~(6) require an entrance or membership fee;~~

~~(7) receive the funds of its members in payment for:~~

~~(a) shares;~~

~~(b) share certificates;~~

~~(c) deposits;~~

~~(d) deposit certificates;~~

~~(e) share drafts;~~

~~(f) NOW accounts; and~~

~~(g) other instruments;~~

~~(8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including drafts drawn on the credit union for~~

~~payment to the member or any third party, in accordance with the procedures established by the board of directors, including drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;~~

~~(9) charge fees for its services;~~

~~(10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;~~

~~(11) extend credit secured by real estate;~~

~~(12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan participation arrangements, in accordance with written policies of the board of directors with one or more:~~

~~(i) other credit unions;~~

~~(ii) credit union service organizations; or~~

~~(iii) other financial organizations; and~~

~~(b) make co-lending arrangements, including loan participation arrangements, in accordance with Subsection (12)(a) subject to the following:~~

~~(i) the credit union or credit union service organization that originates a loan for which co-lending arrangements are made shall retain an interest of at least 10% of the loan;~~

~~(ii) on or after May 5, 2003, the originating credit union or credit union service organization may sell to a credit union an interest in a co-lending arrangement that involves a member-business loan only if the person receiving the member-business loan is a member of the credit union to which the interest is sold;~~

~~(iii) on or after May 5, 2003, the originating credit union or credit union service organization may sell to a credit union service organization an interest in a co-lending arrangement that involves a member-business loan only if the person receiving the member-business loan is a member of a credit union that holds an interest in the credit union service organization to which the interest is sold; and~~

~~(iv) a nonexempt credit union may not originate, participate in, or obtain any interest in a co-lending arrangement, including a loan participation arrangement, in violation of Section 7-9-58;~~

~~(13) sell and pledge eligible obligations in accordance with written policies of the board of directors;~~

~~(14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;~~

~~(15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;~~

~~(16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;~~

~~(17) discount and sell notes and obligations;~~

~~(18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;~~

~~(19) invest funds as provided in this title and in its bylaws;~~

~~(20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;~~

~~(21) (a) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes; and~~

~~(b) hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;~~

~~(22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;~~

~~(23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;~~

~~(24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;~~

~~(25) act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred compensation or tax deferred device, including individual retirement accounts as defined by Section 408, Internal Revenue Code;~~

~~(26) purchase reasonable accident and health insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;~~

~~(27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability arising out of consumer legislation including truth-in-lending and equal credit laws and as provided in its bylaws;~~

~~(28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;~~

~~(29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if:~~

~~(a) the participation is not inconsistent with the law and rules of the department; and~~

~~(b) any credit union participating in any system notifies the department as provided by law;~~

~~(30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;~~

~~(31) provide any act necessary to obtain and maintain membership in the credit union;~~

~~(32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;~~

~~(33) undertake other activities relating to its purpose as its bylaws may provide;~~

~~(34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner;~~

~~(35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs; [and]~~

~~(36) advertise to the general public the products and services offered by the credit union if the advertisement prominently discloses that to use the products or services of the credit union a person is required to:~~

~~(a) be eligible for membership in the credit union; and~~

~~(b) become a member of the credit union[.]; and~~

~~(37) perform custodial services as defined in Section 7-27-102.~~

~~Section 5. Section **7-27-101** is }~~enacted to read:

CHAPTER ~~{27}~~61. DIGITAL ASSET MANAGEMENT ACT

Part 1. General Provisions

~~{7-27-101}~~13-61-101. Definitions.

As used in this chapter:

(1) "~~{Control,}~~Agent" ~~{notwithstanding Section 7-1-103, and}~~means a person who is authorized to act on behalf of an owner with respect to a digital ~~{consumer }~~asset~~{ or a digital security,}~~.

(2) "Control" means:

(a) ~~{a secured party, or an agent, custodian, fiduciary, or trustee of the secured party,}~~an owner or an agent has the exclusive legal authority to conduct a transaction relating to the digital ~~{consumer }~~asset~~{ or the digital security}~~, including by means of a private key or the use of a multi-signature arrangement the ~~{secured party}~~owner or agent authorizes; or

(b) ~~{the}~~a secured party has created a smart contract which gives the secured party exclusive legal authority to conduct a transaction relating to a~~{ digital consumer asset or the}~~ digital security.

~~{ (2) "Custodial financial institution" includes:~~

~~(a) a bank;~~

~~(b) a credit union;~~

~~(c) a depository institution;~~

~~(d) an industrial bank; or~~

~~(e) an entity that holds digital assets.~~

~~(3) (a) "Custodial services" means the safekeeping and management of customer digital assets through the exercise of fiduciary and trust powers under this part.~~

~~(b) "Custodial services" includes fund administration and the execution of customer instructions.~~

~~(4) "Debtor" means a person obligated on a digital asset.~~

~~}~~ (~~{5}~~3) (a) "Digital asset" means a representation of economic, proprietary, or access rights that is stored in a computer readable format.

(b) A "~~{digital}~~Digital asset" ~~{is}~~includes:

(i) a digital ~~{consumer}~~user asset; or

(ii) a digital security~~{; or~~

~~(iii) a virtual currency.~~

~~(6) (a) "Digital consumer asset" means a digital asset that is used or bought primarily for consumptive, personal, or household purposes.~~

~~(b) "Digital consumer asset" includes an open blockchain token constituting intangible personal property.~~

~~(c) "Digital consumer asset" does not include:~~

~~(i) a digital security; or~~

~~(ii) a virtual currency.~~

~~(7) (a}~~.

(4) "Digital security" means a digital asset which constitutes a security, as that term is defined in Section 70A-8-101.

(5) (a) "Digital user asset" means a digital asset that is used or bought primarily for consumptive, personal, or household purposes.

(b) "Digital ~~{security}~~user asset" includes an open blockchain token.

(c) "Digital user asset" does not include~~{:~~

~~(i) }~~ a digital ~~{consumer asset; or~~

~~(ii) a virtual currency}~~security.

(~~{8}~~6) "Multi-signature arrangement" means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two or more private keys are required to conduct a transaction.

{ ~~(9) (a) "Possession" means the ability to exclude others from the use of a digital asset.~~

~~(b) "Possession" includes:~~

~~(i) the use of:~~

~~(A) a private key;~~

~~(B) a multi-signature arrangement exclusive to the secured party; or~~

~~(C) a smart contract; and~~

~~(ii) delivery of certified digital securities.~~

} (~~{10}~~7) "Private key" means a unique element of cryptographic data, which is:

(a) held by a person;

(b) paired with a unique, publicly available element of cryptographic data; and

(c) associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

(~~{11}~~8) "Smart contract" means ~~{an automated}~~a transaction~~{, as that term is defined in Section 46-4-102,}~~ which is comprised of code, script, or programming language that executes the terms of an agreement, and which may include taking custody of and transferring a digital asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

{ ~~(12) (a) "Virtual currency" means a digital asset that is:~~

~~(i) used as:~~

~~(A) a medium of exchange;~~

~~(B) a unit of account; or~~

~~(C) a store of value; and~~

~~(ii) not recognized as legal tender by the United States government.~~

~~(b) "Virtual currency" does not include:~~

~~(i) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender or bank credit;~~

~~(ii) a digital representation of value that a publisher issues for use solely within an online game, game platform, or family of games that the publisher sells or offers on the same game platform;~~

~~(iii) a digital consumer asset; or~~

~~(iv) a digital security.~~

} Section {~~6~~}2. Section **{~~7-27~~}13-61-102** is enacted to read:

{~~7-27-102~~}13-61-102.{ ~~Classification~~} Ownership of digital assets.

{ ~~(1) Digital consumer assets are intangible personal property and shall be considered general intangibles, as that term is defined in Section 70A-9a-102 for purposes of this chapter, and Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.~~

} ({~~2~~}1) Digital securities are intangible personal property and shall be considered securities and investment property for purposes of this chapter, Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities, and Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.

({~~3) Virtual currency is intangible personal property and, notwithstanding Subsection 70A-1a-201(2), shall be considered money for purposes of this chapter and Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.~~

~~(4) (a) A digital asset may be treated as a financial asset under Section 70A-8-101, pursuant to a written agreement with the owner~~}2) An owner of a digital user asset may demonstrate ownership of the digital {~~asset.~~

~~(b) If treated as a financial asset, a digital asset is intangible personal property.~~

~~(5) A custodial financial institution providing custodial services under Section 7-27-104 shall be considered to meet the requirements of a securities intermediary as that term is defined in Section 70A-8-101.~~

~~(6) Classification of digital assets under this section may not be construed to apply to any other asset.~~

~~Section 7. Section **7-27-103** is enacted to read:~~

~~**7-27-103. Perfection of security interests in digital assets -- Financing statements.**~~

~~(1) (a) Notwithstanding Section 70A-9a-310, perfection of a security interest in a digital asset may be achieved~~}user asset through control.

({~~b) A security interest held by a secured party that has control of the digital asset has priority over a security interest held by a secured party that does not have control of the digital asset.~~

~~(2) Before a secured party may take control of a digital asset that is a digital consumer asset or a digital security, the secured party shall enter into a control agreement with the debtor and all other necessary parties.~~

~~(3) A control agreement for a digital asset may:~~

~~(a) name the parties subject to the agreement;~~

~~(b) describe the digital asset subject to the agreement; and~~

~~(c) set the terms under which a secured party may pledge the secured party's security interest in the digital asset as collateral for another transaction.~~

~~(4) If the debtor is located in Utah, the secured party may file a financing statement with the Division of Corporations and Commercial Code, created in Section 13-1a-1, to perfect the secured party's security interest in:~~

~~(a) a digital asset that is a digital consumer asset or a digital security; or~~

~~(b) the proceeds from a digital asset if perfected in accordance with Section 70A-9a-315.~~

~~(5) Notwithstanding any other provision of law, including Title 70A, Uniform Commercial Code, a transferee takes a digital asset that is a digital consumer asset or a digital security free of any security interest:~~

~~(a) if the transferee took the asset for value six or more months ago;~~

~~(b) the transferee never received notice of an adverse claim; and~~

~~(c) the transferee does not have actual notice of an adverse claim.~~

~~(6) Subsection (5) only applies to a security interest in}~~3) Nothing in this chapter shall be interpreted to restrict or impair an owner's right to own a digital asset~~{ perfected by a method other than control.~~

~~(7) Perfection by control creates a possessory security interest and does not require physical possession.~~

~~(8) For purposes of Title 70A, Uniform Commercial Code, and this part, a digital asset is located in the state if:~~

~~(a) a Utah custodian possesses or controls the digital asset;~~

~~(b) the debtor or secured party is physically located in the state; or~~

~~(c) the debtor or secured party is incorporated or organized in the state.~~

~~(9) Evidence of location in the state for purposes of Subsection (8) can be found in:~~

~~(a) a security agreement accompanying a possessory security interest or other secured transaction that describes the possessory nature of the private key of a digital asset; and~~

~~(b) the choice of law in a security agreement.~~

~~Section 8. Section **7-27-104** is enacted to read:~~

~~**7-27-104. Custodial services of digital assets.**~~

~~(1) (a) A custodial financial institution may provide custodial services consistent with this section upon providing 60 days written notice to the commissioner.~~

~~(b) A custodial financial institution that elects to provide custodial services under this section shall comply with the provisions of this section}~~.

~~{ (2) A custodial financial institution may serve as a qualified custodian of a digital asset, as specified by the United States Securities and Exchange Commission defined in 17 C.F.R. Sec. 275.206(4)-2.~~

~~(3) In performing custodial services for a digital asset, a custodial financial institution shall:~~

~~(a) implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules for custodial services;~~

~~(b) maintain information technology best practices relating to digital assets held in~~

~~custody;~~

~~(c) fully comply with applicable federal and anti-money laundering, customer identification, and beneficial ownership requirements; and~~

~~(d) take other actions necessary to carry out this section, which may include:~~

~~(i) exercising fiduciary powers similar to those permitted to national banks; and~~

~~(ii) ensuring compliance with federal law governing digital assets classified as commodities.~~

~~(4) The commissioner may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specify required best practices described in Subsection (3)(b).~~

~~(5) (a) If a custodial financial institution takes custody of a digital asset under this section, the digital asset is not a depository liability or asset of the custodial financial institution.~~

~~(b) A custodial financial institution, or a custodial financial institution's subsidiary, may register as an investment adviser, investment company, or broker dealer as necessary.~~

~~(c) A custodial financial institution shall maintain control over a digital asset while the custodial financial institution has custody of that digital asset.~~

~~(6) A customer shall elect, with respect to each of the digital assets of the customer over which the custodial financial institution maintains custody, a written agreement stating whether the custodial financial institution's custody is:~~

~~(a) under bailment as a nonfungible or fungible asset; or~~

~~(b) under bailment pursuant to Subsection (8).~~

~~(7) Digital assets held under bailment pursuant to Subsection (6)(a) shall be strictly segregated from other assets.~~

~~(8) (a) A custodial financial institution may undertake transactions with a customer's digital asset if:~~

~~(i) the customer elects for the custodial financial institution to hold custody under bailment in Subsection (6)(b); and~~

~~(ii) the customer provides instructions for the custodial financial institution to undertake transactions with the customer's digital asset.~~

~~(b) A custodial financial institution maintains possession or control of a digital asset as described in Subsection (6) if the custodial financial institution enters into an agreement with~~

~~the counterparty to a transaction which contains a time for return of the asset.~~

~~(c) A custodial financial institution shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian.~~

~~(9) A custodial financial institution and a customer shall agree in writing to:~~

~~(a) the source code version the custodial financial institution will use for each digital asset; and~~

~~(b) the treatment of each asset under Title 70A, Uniform Commercial Code.~~

~~(10) Any ambiguity in Subsection (9) shall be resolved in favor of the customer.~~

~~(11) A custodial financial institution shall provide written notice to the customer, and require written acknowledgment from the customer:~~

~~(a) of any non-emergency updates, including the material source code updates, relating to any of the customer's digital assets of which the custodial financial institution holds custody;~~

~~(b) of the heightened risk of loss from transactions under Subsection (8);~~

~~(c) that some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under Subsection (6)(b);~~

~~(d) that custody under Subsection (6)(b) may not result in the segregation of the customer's digital assets from other customer assets; and~~

~~(e) that the custodial financial institution is not liable for losses suffered under Subsection (8), except for liability consistent with the custodial financial institution's fiduciary and trust responsibilities.~~

~~(12) (a) A custodial financial institution and a customer shall agree in writing to:~~

~~(i) a time period within which the custodial financial institution must return to the customer a digital asset the custodial financial institution holds in custody; and~~

~~(ii) other material terms.~~

~~(b) If a customer makes an election under Subsection (6)(b), the custodial financial institution and the customer may also agree in writing to the form in which the custodial financial institution shall return the digital asset.~~

~~(13) (a) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section shall accrue to the benefit of the customer, except as specified by a written agreement between the custodial financial institution and the customer.~~

~~(b) The custodial financial institution may elect not to collect certain ancillary or subsidiary proceeds, as long as the custodial financial institution's election not to collect is disclosed in writing.~~

~~(c) A customer who makes an election under Subsection (6)(a) may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.~~

~~(14) (a) A custodial financial institution may not authorize or permit rehypothecation of digital assets.~~

~~(b) A custodial financial institution may not engage in any activity to use or exercise discretionary authority relating to a digital asset except activity the custodial financial institution engages in based on customer instructions.~~

~~(15) A custodial financial institution may not take any action which would likely impair the solvency or the safety and soundness of the custodial financial institution.~~

~~(16) The commissioner shall make rules, in accordance with Title 63G, Chapter 3, Administrative Rulemaking Act, and in consideration of the nature of customary banking custodial services, to determine whether a custodial financial institution's actions would impair the solvency or the safety of the custodial financial institution in violation of Subsection (15).~~

~~Section 9. Section **7-27-201** is enacted to read:~~

~~**Part 2. Virtual Currency**~~

~~**7-27-201. Definitions.**~~

~~(1) "Adverse claim" means a claim that a claimant has a property interest in a virtual currency and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the virtual currency.~~

~~(2) "Qualifying purchaser" means a purchaser that obtains control of a virtual currency for value and without notice of an adverse claim.~~

~~Section 10. Section **7-27-202** is enacted to read:~~

~~**7-27-202. Rights in virtual currency.**~~

~~(1) A purchaser of a virtual currency acquires all rights in the virtual currency that the transferor had or had power to transfer.~~

~~(2) A purchaser of a limited interest in a virtual currency acquires rights only to the extent of the interest purchased.~~

~~(3) In addition to acquiring the rights of a purchaser, a qualifying purchaser acquires~~

~~the purchaser's rights in a virtual currency free of any adverse claim.~~

~~(4) An action based on an adverse claim to a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or another theory, may not be asserted against a qualifying purchaser.~~

~~(5) A person has notice of an adverse claim if:~~

~~(a) the person has actual knowledge of the adverse claim; or~~

~~(b) the person is aware of facts sufficient to indicate that there is a significant possibility that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim.~~

~~(6) The filing of a financing statement with the Division of Corporations and Commercial Code, created in Section 13-1a-1, is not sufficient to serve as notice of an adverse claim to a purchaser of a virtual currency.~~

~~Section 11. Section **7-27-203** is enacted to read:~~

~~**7-27-203. Control of virtual currency.**~~

~~(1) A person has control of a virtual currency if:~~

~~(a) the virtual currency, or the system in which the virtual currency is recorded, if any, gives the person:~~

~~(i) the power to derive substantially all the benefit from the virtual currency;~~

~~(ii) subject to Subsection (2), the exclusive power to prevent others from deriving substantially all the benefit from the virtual currency; and~~

~~(iii) subject to Subsection (2), the exclusive power to transfer control of the virtual currency to another person or to cause another person to obtain control of a virtual currency that derives from the virtual currency; and~~

~~(b) the virtual currency, a record attached to or logically associated with the virtual currency, or the system in which the virtual currency is recorded, if any, enables the person to readily identify the person as having the powers described in Subsection (1)(a).~~

~~(2) A power described in Subsection (1)(a)(ii) or (1)(a)(iii) is exclusive even if:~~

~~(a) the virtual currency or the system in which the virtual currency is recorded, if any, limits the use to which the virtual currency may be put or has protocols to result in a transfer of control; and~~

~~(b) the person has agreed to share the power with another person.~~

~~(3) For the purposes of Subsection (1)(b), a person may be identified through any method, including:~~

~~(a) name;~~

~~(b) identifying number;~~

~~(c) cryptographic key;~~

~~(d) office; or~~

~~(e) account number.~~

~~}~~